

201037038



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

JUN 22 2010

SEPARATE

Legend

Taxpayer A:

IRA X:

Bank A:

Date 1:

Amount M:

Date 2:

Bank B:

Account Y:

Year 1:

Dear :

This is in response to your letters dated December 15, 2009, and January 2, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Account (IRA), IRA X with Bank A. Taxpayer A, asserts that on Date 1 Taxpayer A received a distribution of

Amount M from IRA X and deposited Amount M in a non-IRA certificate of deposit at Bank B. Taxpayer A asserts that her failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Bank B to deposit Amount M into a rollover IRA.

On Date 1 Taxpayer A closed IRA X to reinvest the funds at another bank for a higher rate of return. On Date 2, Taxpayer A presented the Amount M check from IRA X for deposit into a certificate of deposit at Bank B. Taxpayer A authorized the deposit of Amount M in Account Y, a non-IRA certificate of deposit at Bank B. Taxpayer A did not provide any rollover instructions to Bank B. The Amount M check did not indicate the funds were from an IRA. Taxpayer A believes that she had paperwork indicating that the funds were from an IRA but neither she nor Bank B could produce copies of these papers. Taxpayer A asserts that Bank B failed to notice that Amount M was issued from an IRA and allowed Taxpayer A to open a non-IRA account with the Amount M check, which caused Taxpayer A's failure to rollover the Amount M check into an IRA.

Taxpayer A first learned that the Date 2 Amount M deposit was not rolled over into an IRA when the Internal Revenue Service notified Taxpayer A, in Year 1, that Amount M had been deposited into a regular savings account.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M contained in section 408(d)(3) of the Code ("the Code").

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

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The information presented and documentation submitted by Taxpayer A does not demonstrate that Taxpayer A failed to accomplish a rollover of Amount M due to any of the factors cited in Rev. Proc. 2003-16 or that financial institution error caused Taxpayer A to miss the 60-day rollover period. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the Date 1 distribution to Taxpayer A of Amount M.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose